"An adequate amount of highly respectable and convincing testimony was offered by the Government to demonstrate that even the principle sought to be followed by the makers of the instrument could not be applied with this instrument. It was explained that the speed or rapidity at which muscular tissue could contract and relax was much less than the rate at which the vibrations occurred in this instrument and the alternating impulses were given, and hence the only effect from the use of the instrument on the muscles of the body was to cause them to contract and remain so until the instrument was removed, the batteries wore out, or the muscles relaxed from fatigue. Many of the particular claims made for the instrument were specifically referred to by the witnesses. In each instance the explanation of why the instrument could not produce the results claimed for it was most convincing.

"Among others appearing for the Government was the eminent physiologist, Dr. Carlson. His testimony and the illustrations he gave supporting his conclusions were in all respects as fully convincing of the accuracy of his judgment as was his test for the determination of which of two fluids was a sugar solution.[6]

"The extent of the accuracy of the actual claims made for the Electreat in the literature accompanying it may be summarized much as one of the witnesses expressed it when, in describing a diagram of the human anatomy with accompanying descriptive matter which appeared in one of the exhibits, he stated that there was an element of truth in the diagram, the element of truth being—that the head was on the right end in the picture and the 'rump' appeared in the proper position. From a practical standpoint, the benefit to be derived from the use of the instrument was tersely stated by one of the several leading physicians of Kansas City, to be that the use of the instrument would not injure one if there was nothing the matter with him, but that if a person was suffering from any disorder or ailment its use might and probably would be injurious.

"Further detailed reference to the facts should be unnecessary to demonstrate the irresistible conclusion arising from the evidence that the claims made for the devices in the literature accompanying them were as falsely misleading as might well be possible by the use of the English language. The conclusion follows that the act of Congress has been violated and the requested order for the destruction of the devices must be made.

"It is beyond the issues in this proceeding to consider the question of whether, if the devices were properly described and labeled and their efficacy stated without exaggeration, the devices could be barred from the mails and interstate commerce. Hence, evidence bearing upon that question admitted subject to objection, is excluded from consideration.

"Neither is the question of whether the manufacturer acted in good faith in an honest belief that the devices would do the things claimed for them an issue in this proceeding. The Government does not seek a penalty in this case other than the destruction of the devices. Evidence bearing upon that question, likewise admitted subject to objection, should also be excluded.

"Formal findings of fact and conclusions of law are filed herewith. Judgment will be entered in accordance with the views herein expressed."

On February 28, 1941, judgment was entered (amended March 10, 1941) ordering that the marshal destroy the product. On March 20, 1941, the claimant filed a motion for a rehearing and application for stay of proceedings which were argued April 25, 1941, and denied by the court without opinion.

377. Misbranding of El Aguinaldo Cuban Honey. U. S. v. 50 Bottles of El Aguinaldo Cuban Honey (and 3 other seizure actions involving the same product). Default decrees of condemnation. Portion of product ordered destroyed; remainder ordered delivered to charitable institutions. (F. D. C. Nos. 2498, 2725, 3438, 3462. Sample Nos. 8932–E, 8937–E, 27491–E, 27495–E.)

The labeling of this product bore false and misleading representations regarding its efficacy in the conditions indicated hereinafter.

On August 6, September 4, November 27, and December 5, 1940, the United States attorneys for the District of Minnesota and the Southern District of Ohio filed libels against 50 bottles of El Aguinaldo Cuban Honey at St. Paul, Minn.; 118 bottles of the same product at Minneapolis, Minn.; and 171 bottles at Cincinnati, Ohio, alleging that the article had been shipped in interstate commerce within the period from on or about December 27, 1939, to on or about

[6] "Time magazine, February 10, 1941, page 44, l. c. 47: Another time he had two beakers of liquid before him: one containing urine, the other, sugar solution. He stuck his finger in one of the containers, tested it and said: 'Ya, dot's sugar.' "

October 29, 1940, by Cuban Honey, Inc., from Lansing, Mich.; and charging that it was misbranded.

Examination of the article showed that it was honey.

It was alleged to be misbranded in that the labeling which accompanied it bore representations that carbohydrates in this form (honey) mean "pep" and pep means "a better you"; that it contained many of the necessary mineral salts; that it had been clinically tested, and that such tests had been carried on in cases of bronchial asthma and bronchitis under the care of reputable physicians; that it had been found to be a desirable food supplement to a bland diet in cases of stomach ulcers and other digestive disorders; that the contents of the stomach had been examined at specific intervals and X-rays taken and that all cases showed much greater improvement when El Aguinaldo Cuban Honey was a part of the diet than without it; that the diets used tended to relieve discomfort, increase vitality, improve the appetite and provide a mild laxative; that it had been used in various types of illness with very pleasing results in many cases; that the article would be efficacious as a palliative for local irritations of nose and throat associated with coughs, colds, asthma, and bronchitis; that for sinus and hay fever it should be diluted with water and used as a nasal spray and should be taken internally 1 or 2 teaspoonfuls one-half hour before meals and before retiring; that in stomach ulcers where a soft bland diet would be prescribed and in other digestive disorders it should be used as a special-purpose food, which representations in the labeling were false and misleading since it was not efficacious for the purposes represented and suggested by the labeling.

On September 19 and October 25, 1940, and January 25, 1941, no claimant having appeared, judgments of condemnation were entered and the lot seized at St. Paul was ordered destroyed and those seized at Minneapolis and Cincinnati were ordered delivered to charitable institutions.

378. Misbranding of Brown's Bron-Ki. U. S. v. 27 1-gallon Cans and 8 5-gallon Cans of Bron-Ki. Default decree of condemnation and destruction. (F. D. C. No. 2364. Sample Nos. 14254–E, 14255–E.)

The labeling of this veterinary product bore false and misleading representations regarding its efficacy in the conditions indicated hereinafter.

On July 16, 1940, the United States attorney for the District of Delaware filed a libel against 27 gallon cans and 8 5-gallon cans of Brown's Bron-Ki at Dagsboro, Del., alleging that the article had been shipped in interstate commerce within the period from on or about May 10 to May 17, 1940, by Brown's Bron-Ki Co. from Lancaster, Pa.; and charging that it was misbranded.

Analysis showed that the article consisted essentially of kerosene with small quantities of volatile oils such as oil of spruce, oil of eucalyptus, oil of tar, and oil of citronella. Bacteriological examination showed that it was devoid of antiseptic properties.

The article was alleged to be misbranded in that its labeling contained representations that it was efficacious in the treatment of colds, bronchitis and other diseases of the respiratory tract in poultry, that it was efficacious as a preventive and treatment for brooder pneumonia, that it contained healing and antiseptic ingredients, and that if treatment was undertaken immediately, infection would not develop; whereas the article would not be efficacious for such purposes.

On August 27, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

379. Misbranding of Colicramp Drops. U. S. v. 114 Packages of Colicramp Drops. Default decree of condemnation and destruction. (F. D. C. No. 3577. Sample No. 46126–E.)

The labeling of this product bore false and misleading representations regarding its efficacy in the conditions indicated hereinafter. It was packed in a very narrow, paneled bottle in a carton considerably larger than was necessary.

On December 27, 1940, the United States attorney for the Southern District of New York filed a libel against 114 packages of Colicramp Drops at New York, N. Y., alleging that the article had been shipped in interstate commerce on or about September 6, 1940, by A. G. Groblewski & Co. from Plymouth, Pa.; and charging that it was misbranded.

Analysis showed that the article consisted essentially of alcohol, ether, and small amounts of peppermint, ammonia, ginger, and extracts of plant drugs.

It was alleged to be misbranded in that the following statements in the labeling were false and misleading: "Colicramp * * * For relief of Gas in Stomach, Wind Pains in Stomach * * * Heavy or Bloated Feeling after Eating. Also